

**Department of Defense Appeal
FY 2006 Defense Authorization Bill**

Subject: Military Retirement Credit for Certain Service by National Guard Members Performed While in a State Active Duty Status Immediately after the Terrorist Attacks of September 11, 2001

Language/Provision: House Section 514 would authorize Federal retirement credit to members of the Army National Guard or Air National Guard who performed full-time State active duty on or after September 11, 2001; and before October 1, 2002, in certain New York counties and in Arlington County, Virginia to support a Federal declaration of emergency. The Senate did not include a similar provision.

DoD Position: The Department opposes this provision for several reasons:

- This provision would establish an untenable precedent that would become the basis for providing Federal retirement credit for any state active duty in which a region or State has been designated as a Federal disaster area.
- States have the responsibility and ability to determine the benefits it provides to the members of its Guard for performing State service. Providing Federal retirement credit for the performance of duty funded by the State and under the command and control of the State should not become a Federal responsibility or turned into a Federal benefit.
- Members of the New York, Virginia and Pennsylvania National Guard who performed state active duty were doing so by order of their respective Governor in their role as a member of the State Guard, not in their Federal role as a member of the National Guard of the United States. Their governors chose to employ them in a state active duty status, rather than asking the President for authority to employ them in a State status supported by federal funds (title 32).
- The Governor of New York chose to employ his State Guard force to perform a variety of missions in a state active duty status following the terrorist attacks of September 11th. There were assets available to the Governor already in a title 32 status, such as the New York National Guard Civil Support Team, which was only actively engaged in operations related to the terrorist attacks on the World Trade Center for a limited period of time.
- Not all of the missions performed by the New York National Guard were directly related to operations at the World Trade Center. They performed missions such as guarding bridges and other infrastructure within the State, missions which were also performed by National Guard members in other States. It would be extremely difficult to justify to National Guard members of other States why members of the New York National Guard are being provided Federal retirement credit for performing virtually the same missions that other National Guard members were performing, albeit in a different State.
- DoD did employ members of the Virginia and Maryland National Guard in a title 10 status to provide security at the Pentagon—a status under the command and control of the Federal government and directly supported with Federal resources.

The Department urges exclusion of this provision.